

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BRENNAN BECKER,

Plaintiff,

-against-

COMPLAINT

17-cv-03543

JAMES HELIS, in his capacity as Superintendent,  
United States Merchant Marine Academy, UNITED  
STATES MERCHANT MARINE ACADEMY,  
UNITED STATES DEPARTMENT OF  
TRANSPORTATION, and the UNITED STATES  
OF AMERICA,

Defendants.  
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Plaintiff Brennan Becker, by his attorneys Cowan, Liebowitz & Latman, P.C.,  
complaining of the Defendants, respectfully alleges as follows:

**SUMMARY OF CLAIMS**

1. Plaintiff is a Midshipman at the United States Merchant Marine Academy (“USMMA”) who was scheduled to graduate on June 17, 2017. He seeks declaratory, injunctive and equitable relief based upon defendants’ conduct in placing him in a “deferred graduation” status, withholding his diploma, and preventing him from graduating from the USMMA, based upon undisclosed claims against him.

**JURISDICTION**

2. This action arises under the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act, 5 U.S.C. §701 et seq. Jurisdiction is conferred upon this Court by the aforesaid statutes and by 28 U.S.C. §§ 1331 and 2201.

**PARTIES**

3. Plaintiff is a Midshipman in his final year of study at the United States Merchant Marine Academy at Kings Point, New York. Plaintiff is a resident of Florida, and was scheduled to graduate from the Academy on June 17, 2013.

4. Defendant James A. Helis, upon information and belief, is and was at all times relevant hereto, a resident of the State of New York, and is the Superintendent of the United States Merchant Marine Academy.

5. Defendant United States Merchant Marine Academy (“USMMA” or “Academy”) is an educational institution that is an instrumentality of the federal government. The Academy is located at 300 Steamboat Road, Kings Point, Nassau County, New York 11024, within the Eastern District of New York.

6. Defendant United States Department of Transportation is an agency of the United States of America, located at West Building, 1200 New Jersey Avenue, SE, Washington, D.C. Upon information and belief, the United States Department of Transportation operates, administers and funds the USMMA.

7. The United States of America is a defendant in this case.

**FACTS COMMON TO ALL CAUSES OF ACTION**

8. Plaintiff is a 22-year-old senior Midshipman at the USMMA, where he has been enrolled since 2013. He has completed all his course and practical requirements that are prerequisite for graduation, including over 150 academic credits and a full year of sea time.

9. Plaintiff’s academic achievements include Gold Star awards (for a GPA of 3.5 or above) every term, and a Sea Year Ribbon with Silver Star for high GPA and exemplary reviews. He is rated in the top ten of his class that started out with over 220 students.

10. As of June 2, plaintiff was scheduled to graduate with his class.

11. On information and belief, plaintiff was to receive an award at graduation for regimental honor and integrity.

12. Based on plaintiff's record and recommendations from industry captains for whom he worked during his sea year, he received and accepted an offer of employment from Chevron Shipping, to begin in late July. This offer is contingent upon his expected graduation from the Academy.

13. On June 2, plaintiff received a letter from the Superintendent of the Academy, defendant Helis, saying that, because of an investigation by the Inspector General of the Department of Transportation, which oversees the Academy, he was placed in the status of "deferred graduation," and was required to leave the campus until further notice. As a result, he has been barred from participating in the graduation exercises on June 17, and will not receive his diploma.

14. The Superintendent's letter provided plaintiff with no notice of the subject of the investigation, of any charges against him, of any opportunity to respond to those unknown charges, or of any other form of redress. His efforts to obtain further information about any charges against him have been unsuccessful. On information and belief, the investigation is in its early stages.

15. On information and belief, the investigation involves the Academy's soccer team, of which plaintiff was a member, and has focused, at least in part, on a team bus trip last September returning from a match against the Coast Guard Academy. Plaintiff was not on that bus trip.

16. While the investigation may also be focusing on other activities, plaintiff has no notice of them, and has been given no opportunity to respond to any charges, accusations or suspicions.

17. Plaintiff, through counsel, has requested that the Academy reconsider its decision to bar him from graduating, or issue his diploma on a provisional basis, pending conclusion of any investigation. The Academy on June 12 rejected that request.

#### **DETRIMENTAL IMPACT ON PLAINTIFF**

18. Plaintiff has been deprived of his opportunity to graduate and receive his diploma. He will lose his job. He will have a stain hanging over his head for however long this investigation, now in its “early stages,” will continue. He will also be unemployable in any position for which he has trained for the last four years that requires a degree from the Academy.

#### **FIRST CLAIM**

19. Plaintiff repeats and reiterates the foregoing paragraphs as if fully set forth at length herein.

20. Defendants individually and in concert deprived and continue to deprive Plaintiff of liberty and property interests in his education and to the degree and other benefits to which he is entitled, without meaningful notice or opportunity to respond to the allegations made against him, and thereby deprived him of procedural due process, in violation of the Fifth Amendment.

21. Defendants individually and in concert failed to follow their own procedures to safeguard plaintiff's rights.

22. Defendants are liable to Plaintiff for denying him procedural due process under the Fifth Amendment to the United States Constitution.

**SECOND CLAIM**

23. Plaintiff repeats and reiterates the foregoing paragraphs as if fully set forth at length herein.

24. Defendants are liable to plaintiff because they agreed to act in concert to inflict an unconstitutional injury, and committed an overt act done in furtherance of that goal causing damage to plaintiff.

**THIRD CLAIM**

25. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

26. Defendants are agents as defined by 5 U.S.C. § 701, and their actions are subject to review under the Administrative Procedure Act (“APA”).

27. The APA prohibits Defendants from actions, findings, or conclusions that are arbitrary and capricious. 5 U.S.C. § 706(2).

28. Defendants continue to enforce their decision to disqualify Plaintiff from graduating even though no review of any evidence has ever been conducted, and he has had no opportunity to be heard.

29. By continuing to enforce their decision, Defendants have acted arbitrarily and capriciously in violation of the APA.

**FOURTH CLAIM**

30. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

31. The APA prohibits Defendants from implementing their regulations via actions, findings, or conclusions accomplished without observing the procedures required by law. 5 U.S.C. § 706(2).

32. The Fifth Amendment to the United States Constitution affords Plaintiff meaningful notice and a meaningful opportunity to respond to the allegations made against him before a property interest may be taken from him.

WHEREFORE, Plaintiff respectfully requests that this Court issue judgment in his favor and against Defendants and grant Plaintiff the following relief:

(a) A declaration that Defendants' decision to place Plaintiff in a "deferred graduation" status is illegal and invalid under the Fifth Amendment to the United States Constitution;

(b) A declaration that Defendants' decision is invalid under the APA because it is arbitrary and capricious;

(c) A judgment vacating and setting aside Defendants' decision to place Plaintiff in a "deferred graduation" status;


(d) A judgment directing the Academy to permit Plaintiff to attend the Academy's graduation ceremony and receive his diploma;

(e) An award of costs for court and attorneys' fees, and for all other relief, legal and equitable, to which Plaintiff may be entitled; and

(f) An award of such other temporary and permanent relief as this Court may deem just and proper.

Dated: New York, New York  
June 12, 2017

COWAN, LIEBOWITZ & LATMAN, P.C.

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